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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,457	05/15/2001	Daniel Joseph Wolff	550-232	8078

7590 10/06/2003

NIXON & VANDERHYE P.C.
8th Floor
1100 North Glebe Road
Arlington, VA 22201-4714

EXAMINER

LE, DEBBIE M

ART UNIT	PAPER NUMBER
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2177

DATE MAILED: 10/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,457

Applicant(s)

WOLFF ET AL.

Examiner

DEBBIE M LE

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 19-22, 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by McClain et al (US Patent 6,049,874).

As per claims 1 and 19, McClain discloses a system and method for backing up and restoring computer files comprising:

file comparing logic operable to compare said stored computer file with an archive copy of said computer file stored when said stored computer file was created (fig. 1, col. 3, lines 15-62); and

alteration reversal logic operable if said file comparing logic detects that said stored computer file and said archive computer file do not match to replace said stored computer file with said archive copy of said computer file (fig. 4, col. 3, lines 63-67, col. 4, lines 1-4).

As per claims 2 and 20, McClain teaches wherein said archive copy of said computer file is stored in one of: an unencrypted form; an encrypted form; an encrypted

media; an encrypted volume; and a PGP disk (col. 2, lines 27-54, col. 11, lines 44-67, col. 12).

As per claims 3 and 21, McClain teaches wherein said archive copy of said computer file is stored in one of a different physical storage device to said stored computer file (fig. 1, # 12, # 18, col. 6, lines 16-24); and a different part of a common physical storage device shared with stored computer file (fig. 1, # 20, col. 6, lines 26-38).

As per claims 4 and 22, McClain teaches wherein a subset of file types stored by said computer are subject comparison by said file comparing logic and to creation of an archive copy for use with said file comparing logic (fig. 2, col. 7, lines 10-23).

As per claims 6 and 24 McClain teaches archive file copy logic operable upon creation of said stored computer file to also created said archive copy of said computer file (col. 2, lines 31-35, 55-57)

As per claims 7 and 25, McClain teaches wherein said archive file copy logic operates to create said archive copy of said computer file for a subset of file types stored by said computer (col. 3, lines 63-67, col. 4, lines 11-31).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5, 8, 14, 17, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClain et al (US Patent 6,049,874) in view of Midgley et al (US Patent 6,526,418 B1).

As per claims 5, 8, 14, 17, 23 and 26, McClain does not explicitly teach wherein said subset of file types include one or more of executable file types; and dynamic link library file types. However, Midgley teaches a subset of file types include one or more of executable file types; and dynamic link library file types (col. 8, lines 24-38). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because those are user specified files and system files and they are usually changed by the users/or administrators. As the results, they are needed to be backup as well in order to restore as needed.

Claims 9-13, 15-16, 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClain et al (US Patent 6,049,874) in view of Chess (US Patent 5,572,590).

As per claims 9, 18 and 27, McClain does not explicitly teach wherein said alteration is a malicious alteration. However, Chess teaches a alteration is a malicious alteration (col. 2, lines 8-22). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because it indicates the change to the computer files is malicious or legitimate so the files can be effectively and efficiently repaired.

Claim 10 is rejected by the same rationale as state in independent claim 1 argument. Furthermore, McClain does not explicitly teach a method of detecting a malicious alteration to a stored computer file. However, Chess teaches a alteration is a malicious alteration (col. 2, lines 8-22). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because it indicates the change to the computer files is malicious or legitimate so the files can be effectively and efficiently repaired.

Claims 11-13, 15-16 have similar limitations as claims 2-7; therefore, they are rejected under the same subject matter.

Conclusion

If a reference indicated as being mailed on PTO-FORM 892 has not been enclosed in this action, please contact Lisa Craney whose phone number is (703) 305-9601 for faster service.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE M LE whose telephone number is 703-308-6409. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN BREENE can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



DEBBIE M LE
Examiner
Art Unit 2177

Debbie Le

September 24, 2003



JOHN ROBINSON
PRIMARY EXAMINER